

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:08cv29**

PAUL FAGAN; and EVELYN FAGAN,

Plaintiffs,

Vs.

**UNITRIN AUTO AND HOME
INSURANCE COMPANY d/b/a
Kemper, a Unitrin Business,**

**Defendant and
Third-Party Plaintiff,**

Vs.

ICA, INC.,

Third-Party Defendant.

ORDER

THIS MATTER is before the court on Ervin L. Ball, Jr.'s second Motion to Substitute Counsel. An identical motion was filed on March 11, 2009, and the court granted the motion on March 16, 2009. Since that date Mr. Nichols has been relieved of responsibility for third-party defendant in this matter and Mr. Ball noted as counsel of record. To the extent the parties desire an Order relieving Mr. Nichol's *law firm* from representing such party and, correspondingly, allowing Mr. Ball's *law firm* to

be substituted, the rules of this court do not provide for appearance by anyone other than licensed attorneys. L.Cv.R. 83.1(C).¹ Consistent with that view, in the Local Civil Rule governing substitution of counsel (discussed below), the rule speaks only to termination and substitution of counsel and not their firms. Thus, the court cannot allow the withdrawal of an entity which cannot appear. To the extent it may assist the parties, however, the court takes the position that proper withdrawal of counsel (as was accomplished here) carries with it a concomitant and full release of the firm from any responsibility for prosecuting or defending the litigation.

Finally, counsel are respectfully advised that “Substitution of Counsel” is governed by L.Cv.R. 83.1(G), which

is accomplished when the new attorney files a ‘**Notice of Substitution of Counsel**,’ which automatically terminates previous counsel and substitutes the new attorney as counsel of record.

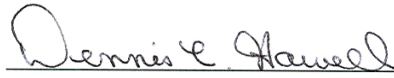
Id. (emphasis added). Such method provides the parties with an ability to obtain the relief sought without court intervention and the notice could contain whatever language counsel deem appropriate.

¹ No such argument is made in the second motion and the court is simply reading the motion broadly.

ORDER

IT IS, THEREFORE, ORDERED that Ervin L. Ball, Jr.'s second Motion to Substitute Counsel (#31) is respectfully denied **DENIED** as moot.

Signed: April 20, 2009

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Dennis L. Howell
United States Magistrate Judge

